APPENDIX

NO. 12-89-00251-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

SCOTT CANTRELL,	§	APPEAL FROM THE
	§	
APPELLANT	§	
	§	
v.	§	62ND JUDICIAL
	§	DISTRICT COURT
	§	
HENNESSY INDUSTRIES,	§	
INC. AND THE	§	
COATS COMPANY,	§	HOPKINS COUNTY,
	§	TEXAS
APPELLEES	§	

Cantrell appeals the judgment against him in his product liability suit. Cantrell was injured when an automobile tire exploded in his face while changing the tire on a machine manufactured by the Coats Company. Because we find the

Nineteen year-old Scott Cantrell had been working at the W.G. Tire Center in Sulphur Springs for four weeks when the accident took place. He was in the process of mounting a tire using Coats' 40.40A pneumatic tire-changing machine when, apparently, the tire was inflated with too much air pressure while the bottom bead of the tire was not in place. The exploding tire and rim left Cantrell blind and permanently disfigured.

Cantrell brought suit against the Coats Company (hereinafter "Coats") and its parent company, Hennessy Industries, Inc., under the theories of strict product liability and negligence. The jury did not find the machine to be defective, nor did they find Coats to be negligent in the design of the 40.40A. The jury did find Cantrell to be negligent in the operation of the machine. Accordingly, the trial court entered a take-nothing judgment against Cantrell.

A Coats tire-changing machine serves several functions. It can be used to take a tire off a rim, put a replacement tire on

a rim, or seat the beads and inflate a replacement tire using its inflation system with air supplied by the operator's air compressor. Coats had manufactured many generations of the same design prior to making the 40.40A. The company also manufactured a different design referred to as the European-style tire changer. All designs manufactured by Coats used basically the same inflation system. At issue at trial was the safety of the inflation system employed by the 40.40A.

The Coats tire-changing machine relies on air supplied by the air compressor in a service station, which usually supplies up to 180 p.s.i. of air pressure. Bead seating only requires approximately 60 p.s.i. Cantrell's theory was that the 40.40A was unreasonably dangerous or defective because the machine allowed excessive air pressure to the tire during bead seating. He contends that Coats failed to equip the machine with a pressure-limiting device that would have restricted the amount of air pressure to safe levels.

Cantrell argued that a pressure-limiting device was technically feasible and available years before 1983, the year the 40.40A in question was manufactured. The trial court, ruling on discovery objections by Coats, limited discovery to documents regarding the 40.40A machine manufactured between 1978 and 1983. The court repeatedly excluded evidence at trial of pressure-limiting devices used on other Coats tire-changing machines. Cantrell maintains that the trial court abused its discretion in limiting discovery to the 40.40A only, causing the rendition of an improper judgment in the case. We agree.

A matter is discoverable if it is relevant to the subject matter of the action; that is, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Tex. R. Civ. P. 166b(2)(a). Such a broad grant is intended to increase the likelihood that all relevant evidence will be disclosed and brought before the trier of fact. *Jampole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984). In *Jampole*, the

trial court limited discovery to knowledge and information pertaining to 1971-77 Chevrolet Vegas in a product liability suit against General Motors. The plaintiff had sought to discover impact tests for other General Motors vehicles built between 1967 and 1979, including GM models manufactured by a foreign subsidiary. The Texas Supreme Court held that the trial court took an unduly restrictive view of the degree of similarity necessary for matters concerning other vehicles to be relevant. "The automobiles need not be identical in order for tests on one to be relevant in determining whether the design of another is defective." *Id.* at 573-74. Furthermore, courts must determine whether a product is defectively designed in relation to safer alternatives. Whether a safer design suitable for one machine is adaptable to another is a question of feasibility to be decided by the trier of fact, not a question to be resolved in ruling on discovery requests. *Id.* at 574. Evidence of the actual use of, or availability of practical, safer alternatives is therefore relevant. *Boatland of Houston v.*

Bailey, 609 S.W.2d 743, 746 (Tex. 1980). We cannot presume harm resulted, even if we find Cantrell has shown on appeal that proper discovery was denied. *Jampole*, 673 S.W.2d at 576. The burden is on Cantrell to show error requiring reversal. *Pope v. Stephenson*, 787 S.W.2d 953, 954 (Tex. 1990).

Although Coats built a diverse line of tire-changing machines, all Coats tire changers used basically the same inflation system to seat the beads and inflate the tires. The trial court should have allowed the discovery of documents relating to safer Coats designs using the same or similar inflation system. The availability before 1983 of a pressure-limiting device on other Coats machines appears to be not only discoverable but directly relevant to the central question in the case. We find that the trial court abused its discretion in limiting discovery to 40.40A machines only.

The documents attached to Cantrell's motion for new trial show Coats' efforts, as early as 1975, to research,

develop, and evaluate safety devices to be used on their lines of tire-changing machines. Although Coats consistently maintained at trial that such a device was not available nor feasible in 1983, an internal Coats memorandum indicates that by 1975, the main practical problem had already been solved. The memo showed the results of an inflation test using a pressure-limiting device that yielded a negligible increase in inflation time compared to inflation time without the safety device.

Coats successfully objected to the discovery of safety devices on other Coats tire-changing machines. Coats then argued Cantrell's failure to show the availability and feasibility of any safety devices at the time the 40.40A was manufactured, the very evidence Coats had successfully kept from the jury. Cantrell has shown that such evidence existed but was not discoverable under the trial court's order. Harm is shown.

We conclude that the improper discovery order by the trial court amounted to such a denial of the rights of the

appellate as was reasonably calculated to cause and probably is cause rendition of an improper judgment, or was such as probably prevented the appellant from making a proper presentation of the case to the appellate court. Tex. R. App. P. 81(b)(1). Therefore, the judgment of the trial court is reversed and the case remanded for a new trial.

BILL BASS
Justice

Opinion delivered March 31, 1992.
Colley, P.S., J., not participating.

(PUBLISHED)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

March 31, 1991

No. 12-89-00251-CV

SCOTT CANTRELL,

Appellant

V.

HENNESY INDUSTRIES, INC. AND THE COATS COMPANY,

Appellees

Appeal form the 62nd Judicial District Court
of Hopkins county, Texas (Tr.Ct.No. 25,144)

THIS CAUSE came on to be heard on the transcript of the record, and the same being inspected, it is the opinion of the Court that there was error in the judgment as

entered by the trial court below and that the same should be reversed and remanded for a trial on the merits.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below be reversed and the cause remended for a trial on the merits in accordance with the opinion of this Court; and that all costs of this appeal be, and the same are, adjudged against the Appellees, Hennesy Industries, Inc. and the Coats Company, for which let execution issue; and that this decision be certified to the court below for observance.

Justice Bill Bass.

Court of Appeals

Twelfth Court of Appeals District

1517 West Front Street
Suite 354
Tyler, Texas 75702

June 18, 1992

Hon. Leonard Davis
P. O. Box 359
Tyler, TX 75710

Hon. Jeffrey S. Lynch
8080 N. Central Expressway
Suite 900
Dallas, TX 75206-1887

RE: Case No. 12-89-00251-CV
Trial Court No. 25,144

Style: Cantrell, Scott
v. Hennessy Industries, Inc., et al

Dear Counsel:

You are hereby notified that in the above-described cause, the following decision and order was this day made and entered by this court:

"Appellee's Motion for Rehearing having been duly considered, it is ORDERED that said motion be, and hereby is, overruled."

Respectfully yours,

/s/ Carolyn Allen
CAROLYN ALLEN,
CLERK

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

October 21, 1992

Ms. Laura A. Frase
Patterson, Lamberty, Kelly
& Stanford
2011 Cedar Springs at Harwood
P.O. Box 1078
Dallas, TX 75221

Mr. Donald G. Stanford
Patterson, Lamberty, Kelly
& Stanford
P.O. Box 1078
Dallas, TX 75221

Mr. Jeffrey S. Lynch
Law Office of Jeffrey S.
Lynch, P.C.
16475 Dallas Parkway
The Bent Tree Tower, Suite 642
Dallas, TX 75248

Mr. Leonard E. Davis
Potter, Guinn, Minton,
Roberts & Davis
P.O. Box 359
Tyler, TX 75710

Mr. M. Keith Dollahite
Hardy & Atherton, P.C.
909 ESE Loop 323
Suite 750
Tyler, TX 75710

Mr. Michael E. Starr
Potter, Guinn, Minton,
Roberts & Davis, P.C.
P.O. Box 359
Tyler, TX 75710

RE: Case No. 0-2692

Style: THE COATS COMPANY, a division of HENNESSY INDUSTRIES, INC., a subsidiary of DANAHER CORPORATION v. SCOTT CANTRELL

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, "Writ Denied."

Respectfully yours,

JOHN T. ADAMS,
CLERK

BY: /s/ Tencha Damian
Tencha Damian, Deputy

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

December 2, 1992

Ms. Laura A. Frase
Patterson, Lamberty, Kelly
& Stanford
2011 Cedar Springs at Harwood
P.O. Box 1078
Dallas, TX 75221

Mr. Donald G. Stanford
Patterson, Lamberty, Kelly
& Stanford
P.O. Box 1078
Dallas, TX 75221

Mr. Jeffrey S. Lynch
Law Office of Jeffrey S.
Lynch, P.C.
16475 Dallas Parkway
The Bent Tree Tower, Suite 642
Dallas, TX 75248

Mr. Leonard E. Davis
Potter, Guinn, Minton,
Roberts & Davis
P.O. Box 359
Tyler, TX 75710

Mr. M. Keith Dollahite
Hardy & Atherton, P.C.
909 ESE Loop 323
Suite 750
Tyler, TX 75710

Mr. Michael E. Starr
Potter, Guinn, Minton,
Roberts & Davis, P.C.
P.O. Box 359
Tyler, TX 75710

RE: Case No. 0-2692

Style: THE COATS COMPANY, a division of HENNESSY INDUSTRIES, INC., a subsidiary of DANAHER CORPORATION v. SCOTT CANTRELL

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

JOHN T. ADAMS,
CLERK

BY: /s/ Tencha Damian
Tencha Damian,
Deputy

NO. 25,144

SCOTT CANTRELL	§	IN THE DISTRICT
	§	COURT OF
	§	
VS.	§	HOPKINS COUNTY,
	§	TEXAS
	§	
KELLY-SPRINGFIELD TIRE	§	
COMPANY	§	
AND THE COATS	§	
COMPANY ADIVISION	§	
OF HENNESSY	§	62ND JUDICIAL
INDUSTRIES	§	DISTRICT

MOTION FOR PROTECTIVE ORDER

COMES NOW The Coats Company, a Division of Hennessy Industries, defendant in the above-entitled and numbered cause and files this its Motion for Protective Order pursuant to Rule 166(b)(5) of the Texas Rules of Civil Procedure.

I.

The above case involves a personal injury accident caused to plaintiff when plaintiff was allegedly changing a tire and tire rim on a tire manufactured by defendant Kelly-

Springfield Tire Company, Model No. 40-40A, and a tire changing machine manufactured by The Coats Company, a Division of Hennessy Industries. On January 26, 1989, the depositions of Jim Holladay and Charles Cunningham of The Coats Company were noticed for depositions in Nashville, Tennessee and a subpoena duces tecum was attached to that deposition notice. (Exhibit "A") Pursuant to the subpoena duces tecum, defendants produced maintenance materials, operating instructions, blueprints of warning labels, copies of warning labels, a complete parts list with parts drawings, installation instructions, and maintenance instructions on certain component parts. During the course of the deposition of Jim Holladay, plaintiff's counsel made a number of new and/or expansive requests of earlier requests and it is from these requests which defendant now seeks protection.

II.

On February 2, 1989, defendant received a new Notice of Intention to Take Deposition of Charles Cunningham along

with four other company employees or former employees for beginning Monday, February 13, 1989, along with a Second Request for Production of Documents to Hennessy Industries, Inc., attached hereto as Exhibit "B". The Second Request has also been attached as a subpoena duces tecum to the deposition notice. (Exhibit "C") The Second Request for Production of Documents requests production of organizational charts for Hennessy Industries; current catalogs for Danaher Corporation Companies including The Coats Company, Solar Industries, and Matco; copies of all claim files, copies of all engineering documents, financial information, etc. In all, 34 new requests for additional documents and/or materials have been made.

Defendant seeks protection from having to produce these materials at the time of the depositions noticed for February 13, 1989. Defendant would show that many of the requests made would require defendant to create files where none exists as well as retrieve thousands of engineering documents including blueprints and component part

specifications which are scattered throughout the company not only on the Model 40-40A tire changer in question, but also on prior generations of the Model 40-40A tire changing machine. As defendant explained during the deposition of Jim Holladay, retrieval of said requests will in all likelihood require months. (See deposition of Jim Holladay, Exhibit D, p. 128-129) Defendant would show that at this time, it has not had an opportunity to review to what extent they have the requested materials, in what format the requested materials are contained, and the location of all the requested materials. Until defendant has had such opportunity to do so, it will not be in a position to meaningfully respond to this Subpoena Duces Tecum or Second Request for Production either by way of production or objection. Defendant would request that the Court allow it no less than two months to respond to this request for production of documents, and at the very least that the Court protect it from having to produce said materials at the depositions

noticed for February 13-14, 1989, as required by plaintiff's Subpoena Duces Tecum.

To require defendants to both search and produce said documents at this time would be onerous, burdensome, and prejudicial to defendants.

WHEREFORE, PREMISES CONSIDERED, defendant respectfully requests this Court to grant this Motion for Protective Order protecting it from production at this time and allowing it sufficient time to respond to plaintiff's second request for production.

Respectfully submitted,

GARDERE & WYNNE

By: /s/ Clint A. Corrie
Jeffrey S. Lynch
State Bar No. 12727500

Clint A. Corrie
State Bar No. 04840300
717 N. Harwood St.
Dallas, Texas 75201
(214) 979-4500
ATTORNEYS FOR
DEFENDANT
THE COATS COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded by certified mail, return receipt requested to Mr. David Noteware, Thompson & Knight, 3300 First City Center, 1700 Pacific Avenue, Dallas, TX 75201; and by Federal Express to Jay N. Green, Potter, Guinn, Minton, Roberts & Davis, P.C., 500 NCNB Center Tower, Tyler, Texas 75710 this 9th day of February, 1989.

/s/ Clint A. Corrie
Clint A. Corrie

NO. 25,144

SCOTT CANTRELL	§	IN THE DISTRICT
	§	COURT OF
	§	
VS.	§	HOPKINS COUNTY,
	§	TEXAS
	§	
HENNESSY INDUSTRIES	§	
AND THE COATS	§	62ND JUDICIAL
COMPANY	§	DISTRICT

ORDER

CAME ON TO BE HEARD on this 13th day of March, 1989, Defendant's Motion for Protective Order regarding Plaintiff's Second Request for Production of Documents. The Court having read the briefs and having heard the arguments of counsel is enters the following order:

ORDERED, that Defendant produce the following documents, excluding any documents which are attorney/client privileged communication and work product, regarding the Coats Model 40.40A tire changer manufactured from 1978 through 1983:

1. Parts lists.

2. Supplier lists.

3. Cost lists.

4. Claim files.

5. Expert reports.

7. Depositions of Jim Holladay, Charles Cunningham and expert witnesses.

IT IS FURTHER ORDERED that Defendant shall provide Plaintiff with a list of all documents to which it claims an attorney/client privilege or work product privilege.

IT IS FURTHER ORDERED that Defendant shall produce to the Plaintiff the OSHA lobbying file.

IT IS FURTHER ORDERED that Defendant shall produce for inspection a prototype, of the pneumatic inflator and/or computer inflator to the extent they exist on or after March 13, 1989, at the Defendant's facility in Nashville, Tennessee.

IT IS FURTHER ORDERED that Defendant shall produce the patent application or patent for the pneumatic inflator and the computerized inflator.

IT IS FURTHER ORDERED that Defendant produce the name of the supplier and the cost of the safety device employed on the pneumatic inflator and the computer inflator.

IT IS FURTHER ORDERED that the Court will conduct an in camera inspection only if it is advised by the Plaintiff that the lists of privileged documents to be provided by the Defendant are not adequate.

ENTERED this 6th day of April, 1989.

/s/ Jim N. Thompson
JUDGE PRESIDING

NO. 25,144

SCOTT CANTRELL	§	IN THE DISTRICT
	§	COURT OF
	§	
VS.	§	HOPKINS COUNTY,
	§	TEXAS
	§	
HENNESSY INDUSTRIES	§	
AND THE COATS	§	62ND JUDICIAL
COMPANY	§	DISTRICT

CHARGE OF COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions

which you should carefully and strictly follow during your deliberations.

1. Do no let bias, prejudice or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer

made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because you conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance

of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case.

Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

"Defectively designed" or "defective design" means a product that is unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use.

"Producing cause" means an efficient, exciting, or contributing cause, which in a natural sequence, produced the occurrence. There can be more than one producing cause.

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result

therefrom. There may be more than one proximate cause of an event.

"Gross negligence" means more than momentary thoughtlessness, inadvertence, or error of judgment. It means such an entire want of care as to establish that the act or omission was the result of actual conscious indifference to the rights, safety, or welfare of the person affected.

"Tire changing machine" means the Coats 40.40A manufactured by Hennessy Industries in 1983 bearing Serial #65143, which Scott Cantrell was using at the time of his accident on April 4, 1987.

"Hennessy Industries" means the corporate entity of Hennessy Industries, Inc., including its operating division and/or tradename of The Coats Company.

QUESTION NO. 1

Do you find the Coats 40.40A tire changing machine was defectively designed at the time it was manufactured by Hennessy Industries, Inc. in 1983?

ANSWER "YES"OR "NO"

ANSWER: No

If you have answered Question No. 1 "yes" and only in that event, then answer the following question.

QUESTION NO. 2

Do you find from a preponderance of the evidence that the defective design was a producing cause of the occurrence in question?
ANSWER "YES"OR "NO"

ANSWER: ---

QUESTION NO. 3

Do you find that Hennessy Industries, Inc. was negligent in its design of the Coats 40.40A machine at the time it was manufactured?

ANSWER "YES"OR "NO"

ANSWER: No

If you have answered Question No. 3 "yes", then answer the following. Otherwise, do not answer.

QUESTION NO. 4

Was the negligence, if any of Hennessy Industries a proximate cause of the injuries in question?

ANSWER "YES"OR "NO"

ANSWER: _____---------_____

QUESTION NO. 5

On the occasion in question, was Scott Cantrell negligent in operating the tire changing machine?

ANSWER "YES"OR "NO"

ANSWER: _____Yes_____

If you have answered Question 5 "yes", then answer Question 6. Otherwise, do not answer.

QUESTION NO. 6

Was the negligence, if any, of Scott Cantrell a proximate cause of the injuries in question?

ANSWER "YES"OR "NO"

ANSWER: _____Yes_____

QUESTION NO. 7

If you answered "Yes" to Question 2 and 6, then answer this question. Otherwise, do not answer this question.

In answering this question, you are instructed that the percentage of responsibility attributable to a product or a party is not necessarily measured by the number of product defects found, acts, or omissions. The percentages you find must total 100%.

For each product or party found by you to have caused the occurrence or injuries, find the percentage caused by:

The tire changing machine: _____ %

Scott Cantrell: _____ %

Total 100% _____

necessarily measured by the number of acts or omissions found. The percentages you find must total 100%.

For each party found by you to have caused the occurrence or injuries, find the percentage caused by:

Hennessy Industries: _____ ----- _____%

Scott Cantrell: _____ ----- _____%

Total _____ 100% _____

QUESTION NO. 9

If the answer to Question No. 2 or 4 is "yes", then answer the following question. Otherwise, do not answer.

Was such conduct of Hennessy Industries, Inc. "gross negligence?"

ANSWER "YES" OR "NO"

ANSWER: _____ ---------- _____

QUESTION NO. 10

In answering these questions, consider the elements of damages listed following each question and none other. Consider each element separately. Do not include damages for one element in any other element. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Scott Cantrell.

What sum of money, if paid now in cash, would fairly and reasonably compensate Scott Cantrell for his injuries in the past, if any, that resulted form the occurrence in question?

Answer in dollars and cents, if any, in each blank:

		IN THE PAST
A.	Loss of Earnings	$ -0-
B.	Medical Care	$ -0-
C.	Physical Pain and Mental Anguish	$ -0-
D.	Physical Impairment	$ -0-
E.	Disfigurement	$ -0-

QUESTION NO. 11

What sum of money, if paid now in cash, would fairly and reasonably compensate Scott Cantrell for the injuries that in reasonable probability he will sustain in the future, if any, that resulted form the occurrence in question?

Answer in dollars and cents, if any, in each blank:

		IN THE FUTURE
F.	Loss of Earnings Capacity	$ -0-
G.	Medical Care	$ -0-
H.	Physical Pain and Mental Anguish	$ -0-
I.	Physical Impairment	$ -0-
J.	Disfigurement	$ -0-
K.	Home Care	$ -0-
L.	Transportation	$ -0-

QUESTION NO. 12

If you have answered "yes" to Question No. 9, then answer this Question. Otherwise do not answer this question.

What sum of money, if any, should be awarded Scott Cantrell as exemplary damages against Hennessy Industries?

> "Exemplary damages" means an amount that you may in your discretion award as an example to others, as a penalty or by way of punishment, in addition to any amount that you have found as actual damages.

Answer in dollars and cents, if any.

ANSWER: $ _____

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. to preside during your deliberations;

2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;

3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;

4. to vote on the questions;

5. to write your answers to the questions in the spaces provided; and

6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

/s/ Jim N. Thompson
JUDGE PRESIDING

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

_____

PRESIDING JUROR

(To be signed by those rendering a verdict if not unanimous.)

/s/ Robert L. Carpenter	/s/ George Clifton
/s/ Pam Johnson	/s/ Larry Connaughton
/s/ Patricia Morgan	/s/ Billy R. Pearson
/s/ Peggy Ketron	/s/ Douglas McCool
/s/ Glenda J. Christian	/s/ Roger Caudle
/s/ J.C. Martin	

Volum 23 page 442

Regarding Plaintiff's Exhibit #120 Cantrell vs. Kelly-Springfield have problem with title.

/s/ Roger Caudle

Disregard Kelly-Springfield. They are not in the case.

/s/ Jim N. Thompson

Volume 23 page 443

Please send Webster dictionary to jury room, definition of prudence.

/s/ Rober Caudle

You will have to follow the definition in the charge. No additional can be given.

/s/ Jim N. Thompson

Volume 23 Page 444

Would like to have testimony of Todd Gorton and his deposition, please

/s/ Roger Caudle

Also, depositions cannot be sent to jury room, and see attached instructions.

/s/ Jim N. Thompson

if the jury disagree as to the statement of any witness they may, upon applying to the Court, have read to them from the Court Reporter's notes that part of such witness' testimony as to the particular point in dispute and no other.

In accordance with this rule, you are instructed that a request to have the Court Reporter's notes read could not be complied with unless the jury disagree as to the statement of a witness. Therefore, it will be necessary for you to state that your are in disagreement as to the statement of such witness or witnesses, if you are, and you should request that part of such witness' or witnesses' statement on the point in dispute and only that point in dispute.

In this connection you are further instructed that the Reporter will be required to read all of the testimony of the witness involved in order to pick out the point or points upon

which you state that you have disputed, and it will take the Court Reporter as long to read the testimony back as it did for the attorneys to put the testimony on; so in the event you ask that any testimony be read back, that you be patient and give the Court Reporter sufficient time to read the testimony which will be required of him and select the testimony on the point or points in dispute.

/s/ Jim N. Thompson
JUDGE PRESIDING

NO. 25,144

SCOTT CANTRELL	§	IN THE DISTRICT COURT
	§	
VS.	§	HOPKINS COUNTY, TEXAS
	§	
HENNESSY INDUSTRIES AND THE COATS COMPANY	§	62ND JUDICIAL DISTRICT

JUDGMENT

Came for hearing the above-referenced proceeding, and each party hereto having appeared in person and announced ready for trial, this case was submitted to a jury on May 17, 1989 at the conclusion of evidence. The charge of the Court and the verdict of the jury are incorporated herein by reference. It appearing to the Court that the verdict of the jury was for the Defendants and against the Plaintiff and the Intervenor, judgment should be rendered upon the verdict in favor of the Defendants and against the Plaintiff and the Intervenor. It is therefore

ORDERED that the Plaintiff Scott Cantrell take nothing by his suit; and it is further

ORDERED that the Intervenor Ohio Casualty Company take nothing by its suit; and it is finally

ORDERED that the Defendants Hennessy Industries, Inc. and The Coats Company recover their costs of court from the Plaintiff Scott Cantrell and the Intervenor Ohio Casualty Company and that execution shall issue forthwith if not timely paid.

ENTERED this 15 day of June, 1989.

/s/ Jim N. Thompson
JUDGE

Case Style	Justices Noted
Prior to 1990	
819 S.W.2d 877 (Tex.App.--Tyler 1987) *Mayes v. State* November 10, 1987 Rehearing Denied April 7, 1988	Justice Colley
823 S.W.2d 302 (Tex.App.--Tyler 1989) *Walker v. State* May 12, 1989 Discretionary Review Granted August 30, 1989 Rehearing Denied October 23, 1991	Justice Colley
1990	
824 S.W.2d 585 (Tex.App.--Tyler 1990) *Barnes v. State* June 26, 1990 Rehearing Denied July 31, 1990	Justice Colley
829 S.W.2d 957 (Tex.App.--Tyler 1990) *Burkes v. State* June 29, 1990	*Per Curiam*

1991

840 S.W.2d 449 — Justice Colley
(Tex.App.--Tyler 1991)
Williams v. State
February 28, 1991
Rehearing Denied April 24, 1992

817 S.W.2d 87 — Justice Colley
(Tex.App.--Tyler 1991)
Wooten v. State
May 17, 1991
Discretionary Review Refused
September 11, 1991

819 S.W.2d 169 — Justice Colley
(Tex.App.--Tyler 1991)
State v. Scott
June 28, 1991
Discretionay Review Refused
October 16, 1991

814 S.W.2d 213 — Cheif Justice Ramey
(Tex.App.--Tyler 1991)
Woods v. State
July 26, 1991

813 S.W.2d 236 — Chief Justice Ramey
(Tex.App.--Tyler 1991)
George v. George
July 31, 1991

819 S.W.2d 173 — Chief Justice Ramey
(Tex.App.--Tyler 1991)
Christopher v. State
July 31, 1991
Discretionary Review Refused
October 16, 1991

815 S.W.2d 309 — Justice Colley
(Tex.App.--Tyler 1991)
Strickland v. State
August 9, 1991

814 S.W.2d 539 — Justice Colley
(Tex.App.--Tyler 1991)
Employers Casualty Company v. Hutchinson
August 14, 1991
Rehearing Overruled September 25, 1991

815 S.W.2d 348 — *Per Curiam*
(Tex.App.--Tyler 1991)
Missouri Pacific Railroad Company v. Whitaker
August 23, 1991

815 S.W.2d 877 — Chief Justice Ramey
(Tex.App.--Tyler 1991)
Buckner v. Buckner
August 30, 1991

815 S.W.2d 893 — *Per Curiam*
(Tex.App.--Tyler)
Parker v. White
September 6, 1991

817 S.W.2d 117 — Justice Colley
(Tex.App.--Tyler 1991)
Bailey v. Cherokee Cty. Appraisal District
September 6, 1991
Rehearing Denied November 14, 1991

817 S.W.2d 131 — Chief Justice Ramey
(Tex.App.--Tyler 1991)
Griffith v. Porter
September 20, 1991

828 S.W.2d 33 — Justice Colley
(Tex.App.--Tyler 1991)
English v. State
September 20, 1991
Rehearing Denied November 14, 1991
Discretionary Review Refused
February 26, 1992

819 S.W.2d 591 — Justice Colley
(Tex.App.--Tyler 1991)
In Interest of Carroll
October 18. 1991

817S.W.2d 185 — *Per Curiam*
(Tex.App.--Tyler 1991)
Pilgrim's Pride Corp. v. Thompson
October 18, 1991

822 S.W.2d 103 — Justice Colley
(Tex.App.--Tyler 1991)
Matter of B.R.
October 18, 1991
Opinion on Rehearing February 11, 1992

818 S.W.2d 392 — *Per Curiam*
(Tex.App.--Tyler 1991)
Fitzgerald v. Rogers
November 4, 1991

828 S.W.2d 42 — Chief Justice Ramey
(Tex.App.--Tyler 1991)
Dixon v. State
November 4, 1991
Discretionary Review Refused
February 26, 1992

840 S.W.2d 469 — Justice Bass
(Tex.App.--Tyler 1991)
Goodson v. State
November 4, 1991
Rehearing Denied June 18, 1992

821 S.W.2d 375 — Justice Colley
(Tex.App.--Tyler 1991)
Cecil v. Smith
December 6, 1991

828 S.W.2d 60 — Chief Justice Ramey
(Tex.App.--Tyler 1991)
Pack v. First Federal Sav. and Loan
December 6, 1991
Rehearing Denied April 27, 1992

828 S.W.2d 65 — Justice Bass
(Tex.App.--Tyler 1991)
Rodarte v. Cox
December 13, 1991
Rehearing Denied April 27, 1992

821 S.W.2d 406 — Justice Colley
(Tex.App.--Tyler 1991)
Dresser Industries, Inc. v. Lee
December 13, 1991
Rehearing Denied February 11, 1992

822 S.W.2d 727 — *Per Curiam*
(Tex.App.--Tyler 1991)
Ex Parte Mathis
December 31, 1991

831 S.W.2d 815 — *Per Curiam*
(Tex.App.--Tyler 1991)
McLain v. State
December 31, 1991
Rehearing Denied June 30, 1992

1992

822 S.W.2d 759 — *Per Curiam*
(Tex.App.--Tyler 1992)
Reppond v. Blake
January 10, 1992

824 S.W.2d 231 — Justice Colley
(Tex.App.--Tyler 1992)
Cheatham v. Rogers
January 10, 1992

822 S.W.2d 799 — Justice Colley
(Tex.App.--Tyler 1992)
Tijerina v. City of Tyler
January 16, 1992
Rehearing Denied February 11, 1992

840 S.W.2d 480 — Chief Justice Ramey
(Tex.App.--Tyler 1992)
Davis v. State
January 16, 1992
Opinion on Motion for Rehearing
June 22, 1992

840 S.W.2d 490 — Chief Justice Ramey
(Tex.App.--Tyler 1992)
Logan v. State
January 16, 1992
Opinion on Motion for Rehearing
June 22, 1992

821 S.W.2d 746 *Per Curiam*
(Tex.App.--Tyler 1992)
Owens v. Wallace
January 23, 1992

831 S.W.2d 825 *Per Curiam*
(Tex.App.--Tyler 1992)
Russell v. State
January 31, 1992
Rehearing Overruled April 27, 1992

842 S.W.2d 696 Chief Justice Ramey
(Tex.App.--Tyler 1992)
Masterson v. Hogue
January 31,-1992
Rehearing Denied June 1, 1992

842 S.W.2d 699 Justice Bass
(Tex.App.--Tyler 1992)
Birdo v. Parker
January 31, 1992
Rehearing Denied June 18, 1992

842 S.W.2d 700 Justice Bass
(Tex. App.--Tyler 1992)
Birdo v. Hammers
January 31, 1992
Rehearing Denied June 18, 1992

824 S.W.2d 796 Chief Justice Ramey
(Tex.App.--Tyler 1992)
Haley v. Boles
February 18, 1992

829 S.W.2d 875 — Justice Blass
(Tex.App.--Tyler 1992)
Cantrell v. Hennessy Industries, Inc.
March 31, 1992
Rehearing Denied June 18, 1992

831 S.W.2d 366 — Justice Chadick (Ret'd)
(Tex.App.--Tyler 1992) — Justicie Bissett (Ret'd)
St. Paul Fire & Marine — Justice Smith (Ret'd)
Ins. v. Bjornson
April 24, 1992

833 S.W.2d 553 — Chief Justice Ramey
(Tex.App.--Tyler 1992)
Apostolic Church v.
Am. Honda Motor Co.
April 27, 1992
Rehearing Denied August 20, 1992

835 S.W.2d 652 — Chief Justice Ramey
(Tex.App.--Tyler 1992)
Hayden v. American Honda Motor
April 27, 1992
Rehearing Denied August 31, 1992

835 S.W.2d 185 — Chief Justice Ramey
(Tex.App.--Tyler 1992)
Roberts v. Allison
April 27, 1992
Rehearing Denied September 28 1992

829 S.W.2d 922 — Justice Bass
(Tex.App.--Tyler 1992)
Wegner v. State
April 30, 1992
Rehearing Denied June 18, 1992

831 S.W.2d 40 — Justice Chadick (Ret'd)
(Tex.App.--Tyler 1992) — Justice Bissett (Ret'd)
Spurs v. State — Justice Smith (Ret'd)
April 30, 1992
Rehearing Denied June 2, 1992

829 S.W.2d 747 — Justice Bass
(Tex.App.--Tyler 1992)
Watson v. Nortex Wholesale Nursery, Inc.
April 30, 1992

831 S.W.2d 399 — Justice Chadick (Ret'd)
(Tex.App.--Tyler 1992) — Justice Bissett (Ret'd)
City of Tyler v. Fowler Furniture Co. — Justice Smith (Ret'd)
May 6, 1992
Rehearing Denied June 2, 1992

833 S.W.2d 232 — Justice Chadick (Ret'd)
(Tex.App.--Tyler 1992) — Justice Bissett (Ret'd)
Williamham Auto World v. Jones — Justice Smith (Ret'd)
May 21, 1992
Rehearing Denied July 10. 1992

832 S.W.2d 143 (Tex.App.--Tyler 1992) *Gilbert v. Brownell Electro* May 29, 1992	Chief Justice Ramey Justice Bass Justice Colley
832 S.W.2d 387 (Tex.App.--Tyler 1992) *LaRue v. LaRue* May 29, 1992	Chief Justice Ramey
842 S.W.2d 301 (Tex.App.--Tyler 1992) *Walker v. State* June 18, 1992	Justice Bass
834 S.W.2d 519 (Tex.App.--Tyler 1992) *City of Seven Points v. Anderson* June 30, 1992	Justice Colley
835 S.W.2d 187 (Tex.App.--Tyler 1992) *Smith v. Smith* June 30, 1992	Justice Colley
834 S.W.2d 130 (Tex.App.--Tyler 1992) *Texas Dept. of Corr. v. Anderson County* July 21, 1992 Rehearing Denied August 19, 1992	Justice Colley

834 S.W.2d 608
(Tex.App.--Tyler 1992)
Old Republic Ins. Co. v. Scott
July 27, 1992
Rehearing Denied August 31, 1992

Justice Chadick (Ret'd)
Justice Bissett (Ret'd)
Justice Smith (Ret'd)

840 S.W.2d 527
(Tex.Ap..-Tyler 1992)
Tracy v. Annie's Attic, Inc.
July 27, 1992
Rehearing Denied October 8, 1992

Justice Chadick (Ret'd)
Justice Bissett (Ret'd)
Justice Smith (Ret'd)

837 S.W.2d 206
(Tex.App.--Tyler 1992)
Carney v. Roberts Investment Company
July 27, 1992
Rehearing Denied September 3, 1992

Justice Chadick (Ret'd)
Justice Bissett (Ret'd)
Justice Smith (Ret'd)

834 S.W.2d 953
(Tex. App.--Tyler 1992)
Willis v. Texas Dept. of Corrections
July 31, 1992

Justice Colley

835 S.W.2d 300
(Tex.App.--Tyler 1992)
Hooten v. Fleckenstein
July 31, 1992

Justice Bass

835 S.W.2d 757
(Tex.App.--Tyler 1992)
Cotton v. State
July 31, 1992

Justice Bass

842 S.W.2d 304 (Tex.App.--Tyler 1992) *Crutchfield v. State* August 14, 1992	Justice Colley
835 S.W.2d 822 (Tex.App.--Tyler 1992) *Thomas v. Arthur* August 28, 1992	Chief Justice Ramey
835 S.W.2d 825 (Tex.App.--Tyler 1992) *Thomas v. Allsip* August 28, 1992	Justice Colley
835 S.W.2d 349 (Tex.App.--Tyler) *Reynolds v. Mid-South Insurance Co.* August 31, 1992	Justice Colley
835 S.W.2d 351 (Tex.App.--Tyler) *Thomas v. Holder* August 31, 1992	*Per Curiam*
837 S.W.2d 825 (Tex.App.--Tyler 1992) *Odlozelik v. State* August 31, 1992	*Per Curiam*
837 S.W.2d 826 (Tex.App.--Tyle 1992) *thomas v. Pankey* August 31, 1992	Justice Bass

853 S.W.2d 319 Justice Bass
(Tex.App.--Tyler 1992)
Texas Fruit Palace v.
City of Palestine
August 31, 1992
Rehearing Denied January 6, 1993

835 S.W.2d 656 Chief Justice Ramey
(Tex.App.--Tyler 1992)
Hayden v. American Honda Motor
August 31, 1992

840 S.W.2d 582 Chief Justice Ramey
(Tex.App.--Tyler 1992)
Timmons v. Luce
August 31, 1992
Rehearing Denied November 25, 1992

840 S.W.2d 586 Justice Bass
(Tex.App.--Tyler 1992)
Martin v. Martin
August 31, 1992
Rehearing Denied December 7, 1992

840 S.W.2d 647 Justice Smith (Ret'd)
(Tex.App.--Tyler 1992)
Fontanez v. Texas Farm
Bureau Insurance Companies
September 10, 1992

840 S.W.2d 675 Justice Bass
(Tex.App.--Tyler 1992)
Murray v. State
September 23, 1992

842 S.W.2d 347 (Tex.App.--Tyler 1992) *Douglas v. State* October 30, 1992	Chief Justice Ramey Justice Colley Justice Bass
842 S.W.2d 354 (Tex.App.--Tyler 1992) *Ex Parte Minifee* October 30, 1992	Justice Colley
843 S.W.2d 205 (Tex. App.--Tyler 1992) *Ex Parte Johnson* November 24, 1992	Justice Colley